

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

MACA.No. 266 of 2006()

AGAINST THE ORDER DATED 04/09/2004 IN IA 1717/2004 IN
OPMV.899/2003 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL
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APPELLANT/APPLICANT

VENUGOPAL, S/O.KUTTAN PILLAI,
SARASWATHI VILAS, VIKAS NAGAR, SREEKARIYAM.P.O,
TRIVANDRUM-17.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.VIMAL KUMAR.A.V.
SRI.A.G.GIRISH KUMAR

RESPONDENTS:

1. M/S.SRI PAPPACHEMICALS,
45, METTUVALLALAR STREET, KANDALAMPATTY,
SELAM.
2. M/S.UNITED INDIA INSURANCE COMPANY
LIMITED,
DIVISIONAL OFFICE NO.1, C.W.C.BUILDING,
L.M.S.COMPOUND, TRIVANDRUM-33.
- * 3. JOBBINSA SHANAVAS, S/O.LATE SHANAVAS,
AMITHAF, GANDHIPURAM, SREEKARIYAM,
TRIVANDRUM-17.
- * 4. SAINULABDEEN, S/O.ABDUL REHUMAN,
AMITHAF, GANDHIPURAM, SREEKARIYAM,
TRIVANDRUM-17.

- * 5. FATHIMA BEEVI, W/O.SAINULABDEEN,
AMITHAF, GANDHIPURAM, SREEKARIYAM,
TRIVANDRUM-17.

(DELETED RESPONDENTS 3 TO 5 FROM THE PARTY ARRAY
AS PER ORDER DATED 9.4.2007 IN I.A.NO.738/2007)

- 6. M/S.ORIENTAL INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE NO.II, ULLOOR,
MEDICAL COLLEGE.P.O, TRIVANDRUM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
SRI.P.R.RAMACHANDRA MENON

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No. 266 OF 2006

Dated this the 6th June, 2007.

J U D G M E N T

The claimant in O.P.(M.V.) No.899/2003, on the file of the Motor Accidents Claims Tribunal, Attingal, is the appellant herein. The appeal is filed against an order passed by the Tribunal dismissing an application filed under Section 140 of the Motor Vehicles Act, in short 'the Act', claiming interim award. The appellant was a driver of a mini lorry, which met with an accident, at 7 a.m. on 4.2.2003, involving a Matador Van. The appellant filed I.A.No.1717/2004 claiming an interim award for no fault liability under Section 140 of the Act. The Tribunal dismissed the application by a cryptic order, which reads as follows:-

“Heard. This is not a case for interim Award as the alleged injuries will not come within the perview of Sec.140 of M.V.Act. Hence petition dismissed.”

Challenging the said order of the Tribunal, this appeal is filed.

2. The learned counsel appearing for the appellant has tenuously argued before me that the view taken by the Tribunal is perverse and illegal. He further submitted that the disability certificate

produced by the appellant would clearly establish that this is a case covered under Section 140 read with Section 142 of the Act. The disability certificate produced by the appellant discloses permanent partial disability of 20% as per Mc Bride's scale.

3. The learned counsel for the appellant relied on decisions reported in **Oriental Insurance Company Ltd. v. Murugan** (1994 (2) KLT 359) and **Saji George v. Joicy Johnson** (2001 (1) KLT Short Notes case 83, at page 68) to substantiate the above point. He also relied on the decision reported in **Suresh v. Nidish Trading Co.** (2006(4) KLT 303).

4. The learned counsel appearing for the respondents had relied on the decision reported in **United India Insurance Company Ltd. v. Thomas** (2000 (1) KLT 516), and also **Muhammed v. Devassia** (2003 (2) KLT 1068).

5. In Thomas's case, cited above, a Division Bench of this Court took a view that loss of front right upper incisor tooth does not amount to permanent disability.

6. In Murugan's case, cited above, a person having 20% permanent disability, on account of the compression fracture of the 6th vertebra, was found entitled to get the benefit under Section 140 of the Act. It was held that the injury sustained was a permanent disablement, as envisaged under Section 142 of the Act.

7. Saji George's case stated above was a case of fracture with partial disablement, in which the permanent partial disability was assessed at the rate of 5%.

8. The question that arises for consideration in this case is whether the injury sustained by the appellant comes under Section 142 of the Act. Section 142 of the Act reads as follows:-

"142. Permanent disablement:- For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint, or,

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head.”

9. A reading of the disability certificate produced show that the injury will not fall under clause (a) or clause (c) of Section 142 of the Act. So, the question is whether it will fall under clause (b) of Section 142 of the Act.

10. The disability certificate produced reveal that there was partial ankylosis of left knee with limitation of flexion to 95° . Partial ankylosis of left ankle with flexion and extension movements limited to arc from 90° angle to 110° plantaf flexion. 3 cm. increase in girth of calf due to oedema. The fracture of tibial condyle on right knee has united with pain on movements of right knee with creptitude due to post traumatic osteoarthritis. There was also fracture of medial malleolus of right ankle united with partial ankylosis of right ankle. Flexion and extension motions limited to arc from 85° angle to 115° plantar flexion. The Doctor has opined that the victim was unable to walk fast, squat, carry any weight or even to drive vehicle. The percentage of disability assessed is 20% .

11. The evidence available prima facie shows that there is permanent disablement impairing of the powers of any member or joint. So, the reasoning of the Tribunal that the injury sustained by the petitioner will not fall within Section 140 of the Act, is illegal and unsustainable. Since, this is a collision of two vehicles, I am of the view that the no fault liability has to be decided by the Tribunal. For that limited purpose, I remand the matter to the Tribunal.

In the result, this appeal is allowed. The finding of the Motor Accidents Claims Tribunal, Attingal, in I.A.No.1717/2004 in O.P. (M.V.) No.899/2003 is set aside. I hold that the appellant is entitled to get the compensation amount. But for the limited purpose of fixing the liability, the matter is remanded back to the Tribunal. The Tribunal is directed to consider the matter afresh and pass orders in I.A.No.1717/2004 in O.P.(M.V.) No.899/2003, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

**K.PADMANABHAN NAIR,
JUDGE**

nj.